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ABSTRACT

The U.S. Office of Education has prepared Guidelines on authorizing copyright protection for materials developed under project grants or contracts as effective June 8, 1970. A supplement is available as LI 002 915. This booklet supersedes OE-11018 entitled "Limited Copyright Protection for Materials Developed Under Project Grants and Contracts from the U.S. Office of Education." (AB)

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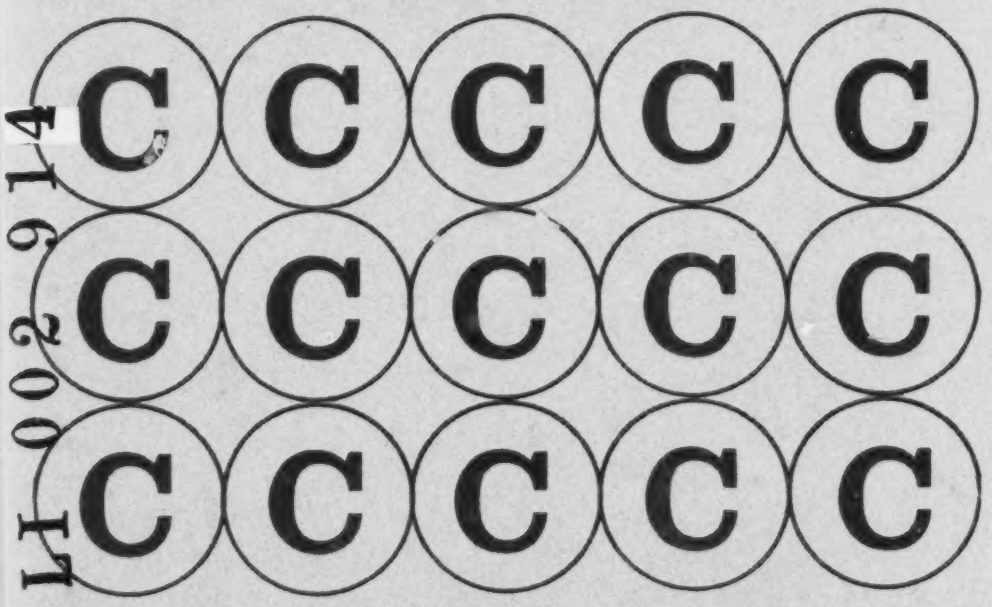

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Effective June 8, 1970

Notice of Issuance of Guidelines on Authorizing Copyright Protection for Materials Developed Under Project Grants and Contracts

These Guidelines, including the Statement of Copyright Policy, constitute revisions of the previous Guidelines and Statement. These Guidelines are being published in the FEDERAL REGISTER for the first time. The previous Statement of Policy was published in the FEDERAL REGISTER on March 1, 1968, and appeared in 33 F.R. 3653.

Sec.

1 Purpose and scope.
2 Definitions.
3 Authorization to secure copyright protection.
4 Request for copyright authorization.
5 Scholarly and professional journals and and periodicals.
6 "Thin Market" materials.
7 Involvement of producers in development.
8 Decision of the Commissioner.
9 General conditions.
10 Royalties.
11 Publication arranged by the Office of Education.
12 Waiver of guidelines requirements.
13 Copyright protection during development.
14 Statement of USOE copyright policy.

SECTION 1 *Purpose and scope.* (a) the U.S. Office of Education is issuing with these Guidelines a revised Statement of Policy (see section 14) regarding materials developed under project grants and contracts. That Statement provides that, with respect to some materials, the public interest will best be served by disseminating those materials without copyright. However, with respect to other materials, copyright protection may be desirable during development, or as an incentive to promote the effective dissemination of such materials. These Guidelines set forth the policies and procedures implementing the revised Statement of Policy.

(b) The primary purpose of these Guidelines is to promote the effective dissemination and use of USOE supported materials in a fair and equitable manner to all interested parties—developers, producers, and users.

(c) The revised Statement of Policy and these Guidelines are applicable only to materials developed under project grants or contracts. They do not apply to materials developed under State-administered formula grant programs.

(d) Although materials developed under Office of Education grants and contracts will not be endorsed by the Office of Education, arrangements for copyright protection must normally be approved by the Commissioner of Education in order to assure that such arrangements are in the public interest. (See section 5 for exceptions.)

(e) The Office of Education will entertain requests for authorization to secure copyright. Although these Guidelines contemplate publication by commercial producers the copyright authorization request should be submitted by the grantee or contractor or by someone designated by the grantee or contractor. If the request is submitted by a producer the procedures for obtaining competition for publication may be arranged by the Office of Education. (See section 11.) The Commissioner of Education may authorize the securing of copyright to protect the integrity of the materials during development or as an incentive to promote the effective dissemination of final materials developed with USOE support. Such authorization will be conditioned upon the copyright being claimed only for a specified limited period of time (herein termed the authorized copyright period). a period of less duration than the statutory copyright term. Copyright authorization will be in the form of an agreement (herein termed the copyright authorization agreement) between the USOE and the grantee or contractor.

(f) In the event the Commissioner of Education (Commissioner) finds that the grantee or contractor has not complied, or is unwilling or unable to comply, with any of the material terms of the copyright authorization agreement, the USOE shall have the right to publish and disseminate the materials, or to have the materials published and disseminated, either with or without copyright protection, and to take such other action as may be allowable under the copyright au-

thorization agreement or otherwise under law or regulation: *Provided*, That the grantee or contractor shall be given notice of any action proposed to be taken by the USOE and afforded and opportunity to be heard.

SEC. 2 *Definitions.* As used herein:

(a) "Materials" means writings (including reports, scholarly works and curriculum materials), sound recordings, films, pictorial reproductions, drawings, or other graphic representations, computer programs and computer data bases, and works of any other nature developed or specified to be delivered under project grants or contracts financially supported, to any extent by the USOE.

(b) *"Final Materials"* are those the development of which has been completed to the extent intended under the grant or contract.

(c) "Experimental Materials" are those which are being tested and evaluated under a grant or contract.

(d) "Thin Market Materials" are those for which a limited market, and consequentially insubstantial publication revenues, are anticipated.

(e) "Development" is the act or process of writing, creating, generating, testing, evaluating, or revising materials, as distinguished from the act or process of publishing and disseminating the final materials.

(f) "Publication" is used herein in the conventional sense, but includes also all acts of preparing final materials, in any media, for dissemination, and the further acts of disseminating those materials, in any mode.

(g) "Dissemination" includes the acts of stocking, selling, delivering, distributing, and installing materials.

(h) "Producer" means any publishing or disseminating organization other than the U.S Government.

(i) "Cosponsor" is any person, organization, or Government agency which contributed materially to a project for developing educational materials. A grantee or contractor may be a cosponsor.

(j) "Project" is a unit of work looking toward the development of a distinct set of educational materials. A grant or contract may include one or more projects or a single project may encompass one or more grants or contracts.

(k) "Copyright Program Officer" is the official within the USOE having responsibility for the operation of the USOE Copyright Program under these Guidelines.

SEC. 3 *Authorization to secure copyright protection.* (Sections 3 through 12 concern copyright authorization to facilitate publication of final materials. Section 13 concerns copyright authorization for experimental materials.)

(a) Grantees and contractors are free to exercise their best judgments as to the format and intellectual content of materials being developed under USOE grants and contracts.

(b) Grantees and contractors may publish or have published grant or contract developed materials without copyright, or may seek authorization for publication under copyright, or may elect not to publish.

(c) If the grantee or contractor elects to publish the materials, or to have them published, without copyright, it may do so without the necessity of obtaining approval from the USOE. However, such publication should not be undertaken unless the grantee or contractor believes that educational objectives will be adequately served by that approach. Neither the grantee or contractor, nor any of their employees involved in the devleopment, will publish or have published a copyrighted version within twelve (12) months after the publication date of the uncopyrighted version.

(d) If the grantee or contractor elects to seek authorization for publication under copyright pursuant to the procedures of these Guidelines it should do so at the earliest feasible time, preferably at an early stage in the development cycle.

(e) If the grantee or contractor decides that it is unable or unwilling to publish the materials, or to have them published, it should inform the project officer immediately after such decision is made so that other publication arrangements can be made.

(f) The Commissioner may authorize a grantee or contractor to obtain publica-

tion under copyright and to claim the copyright for a specified limited period, generally not to exceed five (5) years, upon a showing that the materials can best be disseminated under copyright. An indication of producer interest in publishing the materials will satisfy the requirement for that showing.

SEC. 4 *Requests for copyright authorization.* (a) Requests for authorization to secure copyright will be addressed to the Commissioner of Education, Attention: Copyright Program Officer, preferably in sufficient time for action before the expiration of the grant or contract.

(b) Each request shall include:

(1) An identification, by number, of the grant or contract involved, the name and address of the USOE project officer, a description of the type or class of materials for which request for authorization to secure copyright is being made, and a copy of the materials, if available.

(2) The rationale whereby the grantee or contractor concluded that the materials should be disseminated under copyright.

(3) A statement on the proposed authorized copyright period and the reasons therefor.

(4) A statement setting forth a proposed "Request for Proposals" which the grantee or contractor intends to use should the request for authorization to secure copyright be approved; a list of prospective producers to be solicited; the best available indication of the size and nature of the estimated market for the materials; and criteria that will be used to select the successful producer, including the proposed publication and dissemination timetable, approximate price to be charged, experience and capability in the field, royalties to be paid, and other appropriate factors. (However, see section 6 below for the treatment of "thin market" materials.)

(5) A statement of any other factors which the grantee or contractor considers to be pertinent to its request.

SEC. 5 *Scholarly and professional journals and periodicals.* In the interest of rapid dissemination of educational information no restriction whatever is placed upon the publication of educational articles in scholarly and professional journals, and in other periodicals.

SEC. 6 *"Thin Market" materials.* Notwithstanding the requirements of section 4 above, the obligation to obtain competition for publication of "thin market" materials will be satisfied by the following procedure:

(a) The grantee or contractor should write to those producers (a minimum of three) which would most likely be interested in publishing the materials. Each should be informed that others are receiving letters. The letter should ask the terms under which the producer would be willing to publish.

(b) The grantee or contractor will furnish copies of the outgoing letters, and of each response, with the copyright authorization request (see section 4), together with a recommendation for selection and the rationale therefor.

(c) The Commissioner will act upon the request in accordance with the provisions of section 8 below.

(d) The Commissioner reserves the right to specify the use of the section 4 procedure if he determines that the materials do not fall within the "thin market" definition.

SEC. 7 *Involvement of producers in development.* (a) Nothing contained in these Guidelines should be interpreted as precluding the involvement of producers in the development of educational materials, provided their involvement is accomplished on a competitive basis so that one producer is not given an undue advantage over other potentially interested producers.

(b) In order to involve producers in the development of educational materials it is contemplated that the "Request for Proposals" specified in subsection 4(b)(4) above will, if desirable, require that the producer perform, in addition to normal publishing and disseminating functions, some additional functions which would normally be identified as development functions. Such functions might include, for example, the printing of experimental materials and their distribution to a specified audience, the design of equipment, the production of films, and similar undertakings.

(c) The advantages seen in involving producers in the development phase are:

(1) Attraction of private investment.

(2) Utilization of unique facilities and expertise.

(3) Guidance in the direction of development toward a viable and salable product, anticipating unique installation and use problems.

(4) Ease of transition from development phase to publication phase.

SEC. 8. *Decision of the Commissioner.* All requests for authorization to secure copyright will be considered by the Commissioner. The grantee or contractor will be notified of the Commissioner's decision.

(a) Where the request is denied, the grantee or contractor will be advised of the reasons for the denial. In such case, the contractor or grantee may request reconsideration within thirty (30) days after receipt of the Commissioner's decision.

(b) For requests which are approved, an agreement, setting forth the conditions under which the grantee or contractor is authorized to secure publication under copyright, including the conditions set forth in section 9 of these Guidelines, and any other conditions deemed appropriate by the Commissioner, will be sent to the grantee or contractor for signature. The agreement will authorize the grantee or contractor to issue the Request for Proposals to prospective producers, to select a producer, and to prepare a publication and dissemination contract.

(c) After receipt and evaluation of the proposals, the grantee or contractor shall submit the name of the producer selected, and the rationale for selection, to the Office of Education for approval of the selection prior to negotiating final terms of a publication and dissemination contract with the producer selected. The publication and dissemination contract will not be executed until it has been approved by the Commissioner.

(d) A grantee or contractor, which has a dissemination capability in addition to a development capability, may be authorized to disseminate materials it has developed, under copyright, under appropriate conditions, upon a showing that such dissemination would be in the public interest.

SEC. 9 *General conditions.* Authorization to publish under copyright shall be subject to such conditions as the Commissioner may deem appropriate, including, but not limited to, the following:

(a) The copyright will normally be in the name of the grantee or contractor.

(b) Neither the grantee or contractor, nor any of their employees, without prior written approval of the Commissioner, shall publish or have published any revision or adaptation of the copyrighted materials during such period of time as the Commissioner shall determine, but not to exceed the authorized copyright period.

(c) In addition to any attribution clause that may be required by reason of the grant or contract, a legend, in the form designated by the Commissioner, will be applied to the copyrighted work which will provide notice of the time limitation imposed by the copyright authorization agreement.

(d) Within six (6) months after publication of the copyrighted material the copyright claim will be registered in the U.S. Copyright Office by the grantee or contractor or by the producer for the grantee or contractor. The application for registration will state the date after which the copyright may no longer be claimed.

(e) With respect to any materials for which the securing of copyright protection is authorized pursuant to these Guidelines, the U.S. Government shall be granted an irrevocable, nonexclusive, and royalty-free license to publish, translate, reproduce, deliver, perform, use and d'spose of all such materials for U.S. governmental purposes.

(f) In the event the Commissioner finds that the producer has failed to comply with the terms of his publication and dissemination contract with the grantee or contractor, the Commissioner shall have the right to license others to publish the materials covered by the copyright and to take such other action as may be authorized under the publica-

tion and dissemination contract: *Provided*, That the grantee or contractor and the producer shall be given writen notice of any action proposed to be taken by the Commissioner and afforded an opportunity to be heard.

(g) If the materials for which copyright is sought are products of a project which is funded jointly with another organization or other organizations or with another Government agency the Commissioner may negotiate with the other organization(s) or agency the terms and conditions by which publication under copyright will be authorized. The purpose of the negotiation will be to reach an accommodation in the event such organization(s) or agency have copyright policies which differ from the Office of Education policy.

SEC. 10 *Royalties.* (a) As a basic proposition it is contemplated that each cosponsor of a project, if there is more than one, is entitled to share in any royalties from published materials resulting from that project in proportion to the financial or equivalent contribution to the project by the cosponsor.

(b) The grantee or contractor shall remit royalties from the sale or rental of the copyrighted materials to the Office of Education for transmittal to the U.S. Treasury. However, the Commissioner may authorize the grantee or contractor to retain a portion of the royalty income to defray administrative expenses to the grantee or contractor resulting from its compliance with the procedures of these Guidelines, and as an incentive to induce the grantee or contractor to develop better materials and to obtain more effective dissemination. The sharing will be accomplished in the following manner: (The grantee or contractor may elect to retain an amount of royalty determined from one of the following two alternative approaches.)

(1) Fifty percent of the net royalty. (Net royalty is defined as that amount remaining after deducting any share or shares due to a cosponsor or cosponsors, other than the U.S. Government or the grantee or contractor, as contemplated in subsection 10(a) above.)

(2) That percentage which corresponds with the financial contribution to the project by the grantee or contractor. (If the grantee or contractor elects this latter alternative the burden of showing such contribution will be upon the grantee or contractor. However, the Commissioner reserves the right to accept or reject such a showing, and to specify the share, not less than 50 percent of the net royalty, to be retained by the grantee or contractor.)

(c) Profit type contractors are not permitted to share in royalties under the provisions of subsection 10(b) above. However, arrangements may be made to allow such contractors to retain royalties to defray administrative expenses, not otherwise recoupable under the contract, incurred in obtaining publication of materials under copyright in accordance with these Guidelines.

SEC. 11. *Publication arranged by the Office of Education.* In the event the grantee or contractor is unwilling or unable to undertake the task of obtaining effective dissemination of the materials in accordance with the requirements of section 4 or 6 hereof, and does not publish or have published without copyright, and provided the Commissioner determines that publication under copyright will promote more effective dissemination and use, the Office of Education may undertake the task of arranging for such dissemination. In that event all royalties which are generated will be paid by the publisher to the U.S. Office of Education, and the grantee or contractor will not share in such royalties.

SEC. 12 *Waiver of guidelines requirements.* (a) The Commissioner reserves the right to permit a grantee or contractor to secure and claim statutory full term copyright in materials, subject only to the requirement that the U.S. Government be granted a royalty free, nonexclusive and irrevocable license to publish, translate, reproduce, deliver, perform, use and dispose of all such materials, for U.S. Government purposes, in those situations wherein the financial support by organizations other than the U.S. Government is so great, as compared with the contribution of the U.S. Government. that it would be inequitable to re-

quire more than the said license.

(b) The Commissioner reserves the right to waive or modify the application of these Guidelines to any other situation where he determines such waiver or modification is in the public interest.

SEC. 13 *Copyright protection during development.* The Office of Education recognizes that there may be occasions where it will be in the public interest to prevent curriculum and other materials from falling into the public domain prematurely while they are being developed, tested, and evaluated. Grantees and contractors may take necessary steps to protect such materials during development, testing, or evaluation: *Provided,* That they shall not be copyrighted without the express approval of the Commissioner. The Commissioner may approve requests to secure copyright and to claim copyright for a limited period of time during development, testing, and evaluation, where it can be demonstrated that such protection is necessary for the effective development of the materials. Grantees and contractors may obtain such approval by submitting a written request to the Commissioner of Education, Attention: Copyright Program Officer, setting forth the reasons why copyright is needed.

SEC. 14. *Statement of copyright policy.* It is the policy of the U.S. Office of Education that the results of activities supported by it should be utilized in the manner which will best serve the public interest. This can be accomplished, in some situations, by distribution of materials without copyright. However, it is recognized that copyright protection may be desirable, in other situations, during development or as an incentive to promote effective dissemination of such materials. In the latter situations, arrangements for copyright of such materials, normally for a limited period of time, may be authorized under appropriate conditions upon a showing satisfactory to the Office of Education that such protection will result in more effective development or dissemination of the materials or would otherwise be in the public interest.

(20 U.S.C. 2)

Effective date: These Copyright Guidelines shall take effect 30 days after publication in the FEDERAL REGISTER.

JAMES E. ALLEN, Jr.,
Assistant Secretary for Education and U.S. Commissioner of Education.

MAY 4, 1970.

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